IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 3438 of 2007()

CC.435/1995 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: IST ACCUSED

T.K.BHARATHY AMMA ALIAS AMMINI,AGED 64
D/O.PARAMESWARA MENON, MELOTH,MARADU NOW
RESIDING AT NANDANAM,CHOTTANIKKARA,
ERNAKULAM DISTRICT.

BY ADV. SRI.B.RAMACHANDRAN
SMT.JOLIMA GEORGE
SMT.P.N.INDU

RESPONDENTS: COMPLAINANT,ACCUSED 2 TO 6 AND STATE

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1. JOSEPH (DIED) NOW REPRESENTED BY HIS
SON BABY P.J, PALLIPARAMBIL HOUSE,
MARDU.

2. SOMASEKHARAN ALIAS KOCHENIYAN,
DOCUMENT WRITER, VALUTHADATHU PARAMBIL,
MARADU.P.O.,

3. A.R.RAPHEL, VILLAGE ASSISTANT
KUMBALAM VILLAGE OFFICE,
PANANGAD P.O.

4. ROSAMMA, VILLAGE OFFICER,
CHERANELLOR VILLAGE OFFICE,
CHITTOOR P.O., PIN 682 027.

5. VALSALA JOHN, U.D.CLERK,
KANAYANNUR TALUK OFFICE,
ERNAKULAM.

6. A.J.THOMAS, RETD, SUB REGISTRAR
ALUNGAL, CHALIKKAVATTOM,
VENNALA P.O., PIN-682 028.

7. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3438 OF 2007

Dated this the 25th day of September, 2007

O R D E R

The revision petitioner is the first accused in C.C.No.435/95 on the file of JFCM-I, Ernakulam. The revision petitioner along with five others are the accused in the private complaint filed by one Joseph who died pending the complaint and has been substituted by his son Baby.

2. The gist of the complaint is as follows:-

The complainant purchased 3.5 cents of immovable property comprised in survey no.268/3 in Maradu village from the first accused on 18.4.91 as per sale deed no.1301/91 of S.R.O., Maradu. Thereafter, the complainant remitted the basic tax for this property in his name. Subsequently, when he approached the 5th accused village officer for paying the basic tax, A5 refused to accept the tax saying that the property is a Government puramboke land. Thereupon, the complainant applied for encumbrance certificate and when it was obtained there also the property was shown as puramboke. An application filed before the Tahsildar also revealed that the property is National Highway

puramboke. Hence, the complaint filed against the vendor, document writer, village officer, village assistant and Sub Registrar.

3. The learned Magistrate as per order dated 10.9.07 after considering the evidence adduced by the complainant under section 244 Cr.P.C. came to the conclusion that since a prima facie case is made out against A1 to A4, there is ground for presuming that they committed an offence alleged against them, but discharged A6(the Sub Registrar) on the ground that no case has been made out against him. It is the said order which is assailed by the revision petitioner/the 1st accused.

4. The learned counsel for the revision petitioner submitted that the property which was sold by him to the original complainant Joseph was his absolute property and it was on account of some mistake committed by the revenue officials that it came to be described as government puramboke and that instead of getting the mistake rectified the complainant was straightaway filing the private complaint. Counsel argues that the complainants' remedy is actually a civil suit for damages. The Magistrate according to the revision petitioner, has not referred to any

material so as to proceed with a complaint as against A1 to A4.

5. I am afraid that I cannot agree with the above submissions. If the complainant was induced to part with his money on the assertion that the property is the absolute property of the first accused and if, as a matter of fact, the property was government puramboke, merely because a civil remedy of damages is available to the complainant, it cannot be said that the prosecution of the accused for offences punishable under sections 120A, 463 and 420 read with section 34 IPC will not lie. Of course the allegation in the complaint will have to be proved by appropriate evidence. At any rate, it cannot be said that the finding of the court below that there is a prima facie case made out against A1 to A4 and there is ground of presuming that they committed offence is illegal or unsustainable. I see no grounds to set aside the said order passed by the Magistrate and to discharge the revision petitioner.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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